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Attorney Docket No. 31960.0104

Ser. No. 10/734,461 Examiner: Mark A. Osele

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

application of:

PEMBERTON ET AL.

Serial No.:

10/734,461

Filed:

12/12/2003

For:

"Method and Device for Preventing Pets from Clawing Home

Furnishings"

Examiner:

Mark A. Osele

Art Unit:

1734

MAIL STOP AMENDMENT Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

The undersigned hereby certifies that the following documents:

- 1. Supplemental Declaration of Bonnie Pemberton;
- 2. Certificate of Mailing by First Class Mail;
- 3. Transmittal Letter (in duplicate); and
- 4. Postcard receipt.

relating to the above application, were deposited as First Class Mail with the United States Postal Service, addressed to Mail Stoop Amendment, Commissioner for Patents, P.O. Box 1450,

Alexandria, VA 22313-1450, on March 12, 2007.

Mailer

Schultz & Associates, P.C.

INTELLECTUAL PROPERTY ATTORNEYS



Mail Stop Amendment Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Re:

U. S. Patent Application Serial No. 10/734,461

"METHOD AND DEVICE FOR PREVENTING PETS FROM CLAWING

HOME FURNISHINGS" Atty. Docket: 31960.0104

Sir:

Enclosed for filing, please find enclosed the following:

- 1. Supplemental Declaration of Bonnie Pemberton;
- Certificate of Mailing by First Class Mail; 2.
- Transmittal Letter (in duplicate); and
- 4. Postcard receipt.

The Commissioner is hereby authorized to charge any underpayment of fees, or credit any overpayment, to Deposit Account No. 50-2225.

Very truly yours

George "Russ" Schultz

GRS/slc Enclosures



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SUPPLEMENTAL DECLARATION OF BONNIE PEMBERTON

- 1. My name is Bonnie Pemberton and I make this declaration in support of the above noted United States Patent Application. I am over 21 years of age, of sound mind and willing and able to make the following Declaration and all facts recited are with my personal knowledge.
- 2. I have reviewed the Office Action of September 25, 2006. The examiner takes the position that my invention was a replacement of the prior art double sided tape offered by the 3M Company, and further implies my invention was merely a repackaging and remarketing of the 3M product. This is not correct. The 3M tape did not have the bisected release layer of my invention. Furthermore, the 3M tape was not completely bisected along an axis parallel to its length. The 3M tape was not provided with a base release sheet and a top release sheet. Also, the 3M tape was rolled and not provided flat or in strips as required by my invention. Therefore my invention was not a repackaging of the prior art but rather is substantially different from and a substantial improvement over the prior art 3M tape.
- 3. The examiner questions whether the market of the stated market share growth includes all double-sided adhesive tapes, including the rolled adhesive tape of 3M or only the double sided adhesive tapes marketed at cat owners for scratch prevention. The examiner implies that an important factor determining market success attributable to product improvements would be whether the double sided adhesive tape roll of 3M tape was sold in pet stores prior to 1996 and questions whether it was ever placed in a way to attract cat owners for its specific use as a cat deterrent. Presumably the examiner means that if the 3M double sided tape was not ever

marketed in a way to attract cat owners for its specific use as a cat deterrent, then the increase in sales of my invention is a result of marketing, packaging, and perhaps advertising instead of because of the features of my invention. But, there is no evidence of this position, it is merely speculation. There is evidence that double sided tape was known to cat owners--in fact the Examiner provided two separate articles in 1998 showing the uses of double sided tape. See, "Claws and All: Living With Your Cat, Your Furniture and Your Piece of Mind", HSUS News, p. 1-4 WWW.HSUS.ORG/CLAWS.HTML, 1996 and "Basic Training for Your Cat"; Perfect Paws, P. 1-2 WWW.PERFECTPAWS.COM/TRAM.HTML,1995 (cited by the Examiner Sept. 28, 1998). It is manifestly unfair to discount the drastic increase in sales of my invention because of speculation that a single 3M product was or was not marketed in a particular way. In the market of double sided adhesive tapes for pet scratch prevention, Fe-Lines, Inc.'s share of the market has grown from 0% to almost 80% in less than 10 years despite the company spending only a small fraction of its income on advertising. Fe-Lines, Inc.'s market share has grown even with the subsequent emergence of products similar in presentation and functionality to the claimed invention. I believe the relatively quick rise in market share is because of the elements of the claimed invention as opposed to the packaging, the elements of the claimed invention being a bisected release layer adjacent to a strip having adhesive surfaces on opposite sides adjacent to a planar transfer sheet. Also, there is evidence from the Declaration of Chris Ruben in the record that many customers have bought my invention because of these features. I have never had a customer tell me in all the years I have sold the product that they bought it because of the package or the way that we advertised it.

4. The examiner suggests that the ASPCA Seal of Approval was given in exchange for payment to the ASPCA. But this is not correct. The ASPCA scrutinizes pet related products to ensure claimed functionality and the safety of pets. Products submitted for the Seal of Approval are reviewed by a panel of ASPCA experts comprised of veterinarians, veterinary toxicologists, animal behaviorists, and animal science specialists nationally renowned in their scientific fields. The ASPCA award is only given after a product passes all tests for quality and safety. Therefore the "Seal of Approval" awarded by the ASPCA in 2000 is not a "quid pro quo" for payment. It is a bona fide and deserved award for my product incorporating my invention.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 3/12/07

Bonnie Pemberton